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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SOOFI CORPORATION,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B208840

(Los Angeles County
Super. Ct. No. SC090759)

APPEAL from a judgment of the Superior Court of Los Angeles County.

John A. Kronstadt, Judge. Affirmed.

Weiss & Hunt, Thomas J. Weiss and Hyrum K. Hunt for Plaintiff and Appellant.

Rockard J. Delgadillo and Carmen Trutanich, City Attorneys, Jeri L. Burge,
Assistant City Attorney, Tayo A. Popoola and Michael L. Bostrom, Deputy City
Attorneys for Defendant and Respondent.

The trial court gave judgment to the City of Los Angeles (the City) after finding that a prelitigation claim presented to the City did not describe the judicial claim that was ultimately alleged by the plaintiff. Plaintiff's government claim asserted a dangerous condition of City-owned property. By contrast, plaintiff's pleading asserts a breach of contract. The facts asserted in plaintiff's government tort claim do not encompass the contractual claim made in its lawsuit. We affirm the judgment.

FACTS

The Original Complaint

In August 2006, Soofi Corporation filed a lawsuit against the City asserting claims for inverse condemnation; negligence; dangerous condition of public property; nuisance; and deprivation of constitutional rights. The dispute relates to three hillside lots owned by Soofi on Castellammare Drive in Pacific Palisades (the Property). The City owns a narrow strip of land immediately above the Property, which is in a geologically unstable neighborhood. After a landslide in February 2005 covered the Property with soil and debris, the City suspended Soofi's construction permit and ordered Soofi to take measures to correct the landslide. Soofi alleges that the City's land was improperly maintained in a dangerous condition. As a result of the City's actions, Soofi was unable to build houses, and lost the Property in a foreclosure sale by its construction lender.

The complaint alleges that Soofi exhausted its administrative remedies. Attached to the complaint is a government claim Soofi presented to the City on January 31, 2006. The City rejected Soofi's claim.

The City's Motion For Summary Judgment

The City pursued a motion for summary judgment. The City argued that Soofi's claims fail as a matter of law, because Soofi and the City entered a settlement agreement in March 2004, resolving Soofi's dispute with the City regarding landslides on the City's strip of land (the Settlement). In a prior action against the City leading to the Settlement, Soofi alleged causes of action for inverse condemnation, nuisance, a dangerous condition

of public property, trespass, and violation of civil rights.¹ In the Settlement, the City agreed to pay \$575,000 to Soofi. In return, Soofi agreed not to refile any claim, charge, cause of action or complaint against the City arising from the facts or causes of action alleged in Soofi's cross-action as to the City's strip of land.

The trial court granted the City's motion for summary judgment. Although Soofi has not provided any documentation of this ruling in the record on appeal, the City agrees that the trial court granted its motion. In any event, Soofi does not challenge the trial court's grant of summary judgment. Soofi's brief states: "This appeal presents a single question of law concerning the elements of a proper administrative claim against the City of Los Angeles." By limiting the scope of the appeal, Soofi has foreclosed review of the ruling granting the City's motion for summary judgment. As a result, none of Soofi's tort causes of action remain viable.

Soofi Files An Amended Complaint

Soofi requested leave to file an amended complaint "to assert an additional theory of recovery" Once again, Soofi has not provided us with any documentation of the trial court's ruling; however, the City agrees that the court allowed Soofi to file a first amended complaint. Soofi's new theory of recovery is that the City breached the Settlement.

Soofi alleges that the City breached the Settlement by failing to appoint a liaison person for Soofi's development project; by failing to allow access to its strip of land to facilitate correction of the slope's instability; and by failing to promptly process and approve Soofi's applications for City permits. Instead, the City issued orders in March and July of 2005 that indefinitely interrupted the development project and prevented its completion. These acts caused Soofi to lose the Property.

The City demurred to the first amended complaint. The City wrote, "Because Soofi has not filed an administrative claim for breach of contract, its amended complaint

¹ Soofi's prior action against the City was actually a cross-complaint. In the main action, Soofi was sued by a neighbor who alleged that Soofi's excavations on the Property compromised the stability of the hillside.

is barred by the Government Claims Act.” Further, “the one-year deadline for presenting an administrative claim for breach of contract has long since passed,” so the demurrer should be sustained without leave to amend. In response, Soofi argued that the administrative claim it presented to the City, in January 2006, adequately covered the facts underlying its cause of action for breach of contract.

The Trial Court’s Ruling

At the hearing on the City’s demurrer, the trial court found “that the administrative claim lacked the sufficient description of the claim as to a breach of the underlying settlement agreement.” The court sustained the demurrer without leave to amend. On April 23, 2008, the court entered judgment in favor of the City, based on its orders granting summary judgment and sustaining the demurrer without leave to amend.

DISCUSSION

Appeal is taken from the judgment. (Code Civ. Proc., § 904.1, subd. (a)(1).) We review de novo the ruling on the demurrer, exercising our independent judgment to determine whether a cause of action has been stated. (*Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115.) The demurrer tests the sufficiency of the plaintiff’s claims as a matter of law.

Claims for money or damages must be presented to a public entity before a lawsuit is filed. (Gov. Code, § 905.) Failure to present a timely claim bars suit against the entity. (Gov. Code, § 945.4.) The law requiring presentment of claims encompasses both tort and contract claims. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 734, 738-740.) “The purpose of the claims statutes is not to prevent surprise, but ‘to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. [Citations.] It is well-settled that claims statutes must be satisfied even in face of the public entity’s actual knowledge of the circumstances surrounding the claim.’” (*Id.* at p. 738.)

The claim presented to the government must state the “date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.”

(Gov. Code, § 910, subd. (c).) It “need not specify each particular act or omission later proven to have caused the injury.” (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 447 (*Stockett*).) “Only where there has been a ‘complete shift in allegations, usually involving an effort to premise civil liability on acts or omissions committed at different times or by different persons than those described in the claim’ have courts generally found the complaint barred.” (*Ibid.*) In *Stockett*, the plaintiff’s administrative claim asserted that he was wrongfully terminated by a public entity “in violation of California public policy.” (*Ibid.*) *Stockett*’s pleadings “elaborated” the improper motivations underlying his termination; therefore, his administrative claim was legally sufficient. (*Id.* at p. 448.)

In the claim it presented to the City, Soofi stated that it was damaged on February 20, 2005, at the Property site. The wrongful act or omission identified by Soofi was that “[t]he City failed to maintain, build, design, repair and keep in acceptable condition its property . . . even after it had notice of defective and dangerous conditions existing on the City owned property. The City has also refused to correct the substandard, defective and dangerous condition on its property.” Soofi claimed as damages that its property was “rendered totally worthless, uninhabitable, and unusable because of the dangerous, substandard and defective condition of the City’s property.”

The facts asserted in Soofi’s government claim are entirely distinct from the facts alleged in Soofi’s one remaining judicial claim for breach of contract. Soofi’s government claim asserts that the City failed to properly maintain its property in a safe condition. By contrast, Soofi’s litigation claim relates to the City’s purported breaches of the Settlement, such as failing to appoint a liaison person, review recommendations for a wall, and approve Soofi’s plans to develop the Property.

The facts stated in Soofi’s government claim do not correspond in any meaningful way with the facts stated in Soofi’s breach of contract cause of action. Soofi’s government claim is not “predicated on the same fundamental actions or failures to act” alleged in the amended complaint. (*Stockett, supra*, 34 Cal.4th at p. 447.) The date,

place and circumstances of the government claim (a landslide on February 5, 2005, at the site of the Property, caused by the City's improper maintenance) differ markedly from the date, place and circumstances of the breach of contract claim (apparently a series of events occurring in the City's offices since March 2004, when the Settlement was signed, relating to the permitting process). These breaches of contract are acts or omissions committed at different times from those committed at the Property at the time of the 2005 landslide. The purpose of the Government Claims Act was thwarted because the City was not alerted that it should investigate alleged breaches of the Settlement before denying Soofi's claim.

We cannot say, as a matter of law, that Soofi's government claim "fairly reflects the facts pled in the complaint." (*Stockett, supra*, 34 Cal.4th at p. 447.) "[T]he complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim.'" (*Ibid.*) Because Soofi failed to substantially comply with the claims presentment statute, the City's demurrer was properly sustained: the facts of Soofi's contract claim do not fairly reflect those asserted in its government tort claim alleging a substandard condition of City property.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.